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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

11 CHRISTOPHER LEE DUNN,

12 Plaintiff,

13 -vs-

14 CITY OF BURBANK; DENNIS A. BARLOW;
15 AND DOES 1 THROUGH 25, INCLUSIVE.

16 Defendants.

CASE NO.: BC 418 792

Plaintiff's Reply to Defendant's Opposition to
Motion for Protective Order and/or to Quash
Subpoena

Date: October 21, 2010
Time: 9:00 a.m.
Dept.: 1A

Complaint Filed: July 28, 2009

Assigned to: Department 40

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1 **I. BURBANK HAS FAILED TO SHOW WHY**

2 **LESS INTRUSIVE DISCOVERY METHODS ARE UNAVAILABLE**

3 “Where a request for information is met with a privacy objection, the creditor must make a
4 sufficient showing of a ‘compelling’ public interest before disclosure will be required. The existence
5 of alternative, nonintrusive methods of discovery will defeat a creditor’s request for information
6 protected by the right of privacy. [*Hooser v. Super. Ct. (Ray)* (2000) 84 CA4th 997, 1003-1004,
7 1007, 1009-1010.” (6:1335 Cal. Practice Guide: Enforcing Judgments and Debts, 2010.)
8 Defendant/Judgment Creditor, City of Burbank (“Burbank”), has made no showing that alternative,
9 nonintrusive methods of discovery are not available. All Burbank has shown in its opposition is that
10 it has not been able to obtain the same privileged documents it seeks here by other methods.
11 Burbank makes no showing whatsoever that it cannot obtain information it needs to collect its
12 judgment by less intrusive means. Burbank has not yet conducted a judgement debtor examination.
13 When it does so, it will be allowed to ask Dunn standard form questions about assets he owns.
14 Burbank has made no showing that such discovery is unavailable or will be ineffective. Until it does
15 show, it should not be allowed to require Dunn to produce documents protected by his and his wife’s
16 rights of privacy.

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18 **II. DUNN SHOULD NOT BE COMPELLED TO PRODUCE**
19 **OVER THREE YEARS OF CREDIT CARD AND**
20 **BANK/BROKERAGE ACCOUNT STATEMENTS**

21 Burbank relies on *Troy v. Superior Court* (1986) 186 Cal. App. 3d 1006, to support its claim
22 that Dunn should be compelled to produce his credit card, bank and brokerage account statements for
23 the last three and one-half years. Burbank claims that, in *Troy*, “the Court of Appeal responded a
24 (sic) number of similar relevance objections.” (Opposition, p.6, ll.8-9.) However, in *Troy, supra*,
25 the requests were not similar to those at bar. In *Troy*, the court held that questions relating to the
26 debtor’s “employment within the last five years, the birthplace of Troy and his spouse, names and
27 addresses of Troy’s partners, coshareholders, coofficers and codirectors, and the contents of Troy’s
28 will” were relevant to the search for assets. (*Troy, supra*, at p.1014.) None of the questions at issue

1 in *Troy* are at issue in the case at bar. Burbank is not seeking answers to questions about Dunn's
2 "employment within the last five years, the birthplace of [Dunn] and his spouse, names and
3 addresses of [Dunn's] partners, coshareholders, coofficers and codirectors, and the contents of
4 Dunn's will." Instead, Burbank is seeking Dunn's credit card statements, bank account statements
5 and brokerage account statements, for the last three and one-half years. Such a broad request for
6 documents was not sanctioned by the court in *Troy*.

7 Burbank also relies on *Hooser, supra*, to support its argument that Dunn should be compelled
8 to produce his bank and brokerage statements for the last three and one-half years. However,
9 *Hooser*, did not hold that such a broad request for documents was proper. All *Hooser* held was that
10 information about whether Hooser's clients "have paid fees to Hooser and, if so, in what amount and
11 where they are deposited or kept," could be obtained "through requests for information about
12 Hooser's personal bank accounts and direct inquiry of Hooser." (*Hooser, supra*, at p.1007.)
13 The types of requests sanctioned by the *Hooser* court could be as simple as questions asking Dunn
14 what bank and brokerage accounts he currently has. *Hooser* does not justify a request for the
15 statements for all active or closed or accounts for the last three and one-half years.

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17 **III. DUNN HAS NOT WAIVED HIS PRIVILEGE**
18 **AGAINST DISCLOSURE OF HIS TAX RETURNS**

19 Burbank admits that one has a privilege against disclosing his/her tax returns, but argues that
20 the privilege can be waived when one files a lawsuit the gravaman of which is inconsistent with
21 asserting the privilege. However, Burbank stops short of actually arguing that Dunn has waived the
22 privilege by filing the instant lawsuit, for obvious reasons. The complaint herein alleged causes of
23 action for invasion of privacy, defamation, negligence and injunctive relief. The gravamen of the
24 complaint was that Burbank wrongfully gave portions of Dunn's private, police officer personnel
25 record to the press for publication. The complaint did not involve the financial affairs of Dunn or
26 Burbank. Thus, Dunn has not waived his privilege against producing his tax returns, and therefore
27 should not be compelled to produce them.

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1 **IV. CONCLUSION**

2 For all the foregoing reasons, Plaintiff respectfully requests that the Court grant his motion
3 for protective order and/or to quash subpoena.
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5 Dated: October 14, 2010

LAW OFFICES OF RHEUBAN & GRESEN

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7 By: Steven M. Cischke
8 Steven M. Cischke
9 Attorneys for Plaintiff, Christopher Dunn
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I am over the age of eighteen and am not a party to the within action. My business address is 15910 Ventura Boulevard, Suite 1610, Encino, California 91436.

On October 14, 2010, I served a copy of the following document described as Plaintiff's Notice of Motion for Protective Order And/or to Quash Subpoena; Memorandum of Points and Authorities; Declaration of Steven M. Cischke on the interested parties in this action as follows:

Carol Ann Humiston
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BY MAIL: By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am "readily familiar" with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. mail Postal Service in Los Angeles, California, in a sealed envelope with postage fully prepaid.

XX **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed as above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

BY FACSIMILE: Based on an agreement of the parties to accept service by facsimile transmission, I faxed the documents to the person(s) at the facsimile numbers listed above. The telephone number of the sending facsimile machine is (818) 815-2737. The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error. A copy of that report showing the time of service is attached.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address listed above. My electronic notification address is dj@rglawyers.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

XX **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED on October 14, 2010, at Encino, California.

Daphne Johnson